Dato' Hj Talaat bin Hj Husain v Chak Kong Yin

HIGH COURT (IPOH) — CIVIL SUIT NO 22-280 OF 2002
VT SINGHAM J
1 MAY 2004

Unincorporated Association — Societies — Constitution — Resolution made in extraordinary general meeting — Contravening appeal provisions — Whether resolution null and void

Unincorporated Association — Societies — Constitution — Resolution made in extraordinary general meeting — Contravening appeal provisions — Whether violation of s 11 of the Societies Act 1966

Unincorporated Association — Societies — Expelled as ordinary member — Whether affects membership of the management committee

The defendant was at all material times an ordinary member of the Royal Perak Golf Club ('the Club') and a member of the Club's Management Committee. On or about 24 July 2001 the defendant violated the Club's By-Law when he entered the 'Non Smoking Area', lit his cigarette and blew the smoke onto a non-smoking member. Further, on 23 September 2001, the defendant accosted a group of members at the open dining area of the Club, shouted obscenities at the group incessantly, and when told to leave, acted in an unruly manner in pounding on the dining table. Complaints were made to the disciplinary committee of the club against the defendant. An inquiry was held in respect of the complaints. The Disciplinary Committee decided to expel the defendant from the Club as provided for in the club's Constitution with immediate effect. By a letter dated 10 December 2001, 116 members of the Club requisitioned for an Extraordinary General Meeting requesting the Disciplinary Committee to reinstate the defendant as a member. Despite the President of the Club attending the Extraordinary General Meeting and informing the members that the agenda could not be deliberated on at an Extraordinary General Meeting as it was against the club's constitution (contravening rule 108 where an appeal against the decision of the Disciplinary Sub-Committee shall be lodged with *the Manager/Secretary in writing within 14 days from the decision*), the members present reinstated the defendant. By a letter dated 9 February 2002, the Manager/Secretary of the Club wrote to the defendant that the reinstatement of the defendant by the Extraordinary General Meeting was null/void as the defendant had failed to appeal against the decision of the Disciplinary Subcommittee and that the defendant's expulsion remained and he was prohibited from entering the Club. As the defendant had continued to enter into the Club, the plaintiff filed this suit for trespass and nuisance against the defendant.

Held, giving judgment for the plaintiff:

(1) In view of the express provisions of the Rules and Constitution of the Club, the defendant is bound by the contractual relationship he has

with the Club. The defendant must exhaust the appeal provision before resorting to seeking help from members of the Club (see para 43).

(2) Although the resolution or decision made at the Extraordinary General Meeting did not expressly amend or rescind the appeal provision under the Rules of the Club in the strict sense of it to the extent of violating s 11 of the Societies Act 1966 and/or Rule 117 of the Rules of the Club, it is still a violation of the appeal provision as expressly provided under the Rules of the Club and tantamount to an amendment/recession of the appeal provided for under the Rules of the Club (see para 57).

(3) Once a member of the Club is expelled in accordance with the Rules of the Club then ordinarily he automatically loses all his rights and privileges which include his position as a member of the Management Committee (see para 58).

[**Bahasa Malaysia summary**

Pada masa yang material defendan adalah ahli biasa dan ahli jawatankuasa pengurusan Keab Golf Diraja Perak (kelab tersebut). Pada atau lebih kurang 24 Julai 2001 defendan telah melanggar undang-undang kecil kelab tersebut di mana dia telah masuk tempat larangan merokok, menyalakan rokoknya dan meniup asapnya ke atas seorang ahli yang tidak merokok. Selepas itu pada 23 September 2001, defendan telah bersemuka dengan sekumpulan ahli di tempat makan malam di kelab tersebut dan memarahi mereka dengan perkataan lucah dan bila beliau disuruh balik bertindak secara kasar dengan menumbuk meja makan. Aduan dibuat kepada jawatankuasa disiplin terhadap defendan. Perbicaraan diadakan mengenai aduan-aduan tersebut. Jawatankuasa disiplin membuat keputusan untuk membuang defendan dari menjadi ahli kelab tersebut dengan serta merta seperti yang termaktub di dalam perlembagaan kelab tersebut. Melalui surat bertarikh 10 Disember 2001, 116 orang ahli kelab tersebut memanggil untuk mesyuarat tergempar memohon jawatankuasa disiplin mengambil semula defendan sebagai ahli. Walaupun Presiden kelab tersebut menghadiri mesyuarat tersebut dan memaklumkan bahawa agenda tersebut tidak boleh dibincang di dalam mesyuarat tersebut kerana ia adalah bertentangan dengan perlembagaan kelab tersebut (melanggar kaedah 108 dimana rayuan terhadap keputusan jawatankuasa kecil disiplin harus dibuat kepada pengurus/setiausaha secara bertulis dalam masa 14 hari dari tarikh keputusan itu), ahli-ahli yang hadir mengambil defendan semula sebagai ahli. Melalui surat bertarikh 9 Februari 2002 pengurus/setiausaha kelab tersebut menulis kepada defendan bahawa pengambilan semula defendan sebagai ahli oleh mesyuarat tergempar adalah tidak sah/terbatal kerana defendan gagal membuat rayuan terhadap keputusan jawatankuasa disiplin dan pembuangan defendan masih berkesan dan beliau dihalang dari memasuki kelab tersebut. Atas sebab defendan masih masuk ke dalam kelab tersebut, tindakan ini dimulakan oleh plaintif untuk pencerobohan dan pengacauan terhadap defendan.

Diputuskan, memberi penghakiman kepada plaintif:

(1) Atas sebab peruntukan yang jelas di dalam kaedah dan perlembagaan kelab tersebut, defendan adalah terikat melalui pertalian kontraknya dengan kelab. Defendan harus menggunakan peruntukan bagi rayuan terlebih dahulu sebelum boleh meminta tolong dari ahli-ahli (lihat perenggan 43).

(2) Walaupun resolusi atau keputusan yang dibuat dalam mesyuarat tergempar tidak meminda atau membatalkan peruntukan untuk rayuan di bawah kaedah-kaedah kelab tersebut secara ketat sehingga ia melanggar seksyen 11 Akta Persatuan 1966 dan/atau kaedah 117 kaedah-kaedah kelab tersebut, ia masih pelanggaran peruntukan untuk rayuan yang termaktub di dalam kaedah-kaedah kelab tersebut dan adalah setaraf dengan pemindahan/pembatalan rayuan yang termaktub di dalam kaedah-kaedah kelab tersebut (lihat perenggan 57).

(3) Sekali ahli kelab dibuang mengikut kaedah-kaedah kelab tersebut kemudian secara otomatik beliau hilang haknya termasuk keahliannya sebagai ahli Jawatankuasa Pengurusan (lihat perenggan 58).]

Notes

For cases on societies generally, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1630–1760

Cases referred to

Andrews & Ors v Mitchell [1905] AC 78 (refd)
Arab Malaysian Finance Bhd v Meridien International Credit Corporation Ltd London [1993] 3 MLJ 193 (refd)
Carl-Zeiss-Stiftung v Herbert Smith & Co (a firm) & Anor [1968] 2 All ER 1002 (refd)
Chan Kum Loong v Hii Sui Eng [1980] 1 MLJ 313 (refd)
Chooa E Pek & Ors v Un Siang Mead & Ors [1982] 1 MLJ 267 (refd)
Datuk Pasamanickam & Anor v Agnes Joseph R Narayanan Samy V Agnes Joseph [1980] 2 MLJ 92 (refd)
David Chong Ket Sui v Datuk Chau Tet On (Chairman and Office Bearer of Royal Sabah Turf Club for and on behalf of himself and the Management Committee of Royal Sabah Turf Club [1993] 3 CLJ 468 (dist)
Everett v Ribbands & Anor [1952] 2 QB 198 (refd)
Federal Insurance Co v Nakano Singapore (Pte) Ltd [1992] 1 SCR 390 (refd)
Florence Bailes v Dr Ng Jit Leong [1983] 2 MLJ 175 (refd)
Fulcrum Capital Sdn Bhd v Dato' Samsudin Abu Hassan, Rahaz Sdn Bhd & Anor (Interveners) and another case [2000] MLJU 610, [2001] 5 CLJ 73 (refd)
Graeme Mcguire & Ors v John Ras Musses & Ors [1998] 3 SLR 180 (refd)
Huang Ee Hoe & Anor v Tiong Thai King & Ors [1991] 1 CLJ 381 (refd)
JC Dias & Ors v JT Alfonso & Ors 1934 180 Sind 180 (folld)
John v Rees [1970] ChD 345 (refd)
Krishnan Rajan a/l N Krishnan v Bank Negara Malaysia & Ors [2003] 1 MLJ 149 (refd)
Lee v The Showmen's Guild of Great Britain [1952] 2 QB 329 (refd)

Manggai v The Government of Sarawak & Anor [1970] 2 MLJ 41 (refd)
Newacres Sdn Bhd v Sri Alam Sdn Bhd [1991] 3 MLJ 474 (refd)
Palaniappa Chettiar v Sithambaram Chettiar & Ors [1982] 1 MLJ 186 (refd)
Pasmore v The Oswaldtwistle Urban District Council [1898] AC 387 (refd)
Petroleum Nasional Bhd v Kerajaan Negeri Terengganu [2004] 1 MLJ 8 (refd)
Radstock Co-Operative and Industrial Society Ltd v Norton-Radstock Urban District Council [1968] 1 ChD 605 (CA) (refd)
Radstock Co-Operative and Industrial Society Ltd v Norton-Radstock Urban District Council [1968] 2 All ER 59 (refd)
Re Buckinghamshire and Constabulary Widow & Orphan Fund and Friendly Society (No 2) [1979] 1 WLR 936 (refd)
SI Raja & Anor v Dato Mak Hon Kam & Ors [1993] 3 MLJ 741 (refd)
Tharmalingam v Sambanthan [1960] MLJ 257 (refd)
Tharmalingam v Sambanthan [1961] MLJ 63 (refd)
Thye Lam & Co v The Eastern Shipping Corpn Ltd [1960] MLJ 235 (refd)
White v Kuzyah [1957] AC 585 (refd)
Wilkinson v Barking Corporation [1948] 1 KB 721 (refd)
Yap Ah Lean v Yap Hoi Leng & 3 Ors [1993] 2 CLJ 47 (folld)

Legislation referred to

Rules of the High Court 1980 O 33 r 2
Societies Act 1966 s 11

A Silvanathan (Rabinder Singh with him) (Kean Chye & Sivalingam) for the plaintiff
Jula Singh (Paramjit & Co) for the defendant

VT Singham J:

[1] The plaintiff, Dato' Hj Talaat bin Hj Husain, in his capacity as the President at the material time and on behalf of the members of the Royal Perak Golf Club, has filed this civil suit against the defendant claiming the following relief:

(a) a declaration that the defendant is not entitled to enter or cross the said club's premises being the land and building situated thereon at Jalan Sultan Azlan Shah, Ipoh, Perak ('the said club's premises');

(b) an order prohibiting the defendant, whether by himself or by his servants or agents or otherwise, from entering, crossing or howsoever getting onto the said club's premises or using the same in any manner whatsoever;

(c) general damages for trespass and nuisance;

(d) aggravated damages;

(e) costs;

(f) any other relief this Honourable court deems fit under, inter alia, its inherent jurisdiction.

[2] The Royal Perak Golf Club will be referred to as 'the Club' in this Judgment. The defendant was at all material times an ordinary member of the Club and a member of the Club's Management Committee.

[3] In order to fully comprehend this case, it is necessary to examine some of the relevant facts, the Rules and Constitution of the Club and other related developments affecting the case.

[4] On or about January 1996, the Club's Management Committee demarcated certain areas of the Club as 'Non-Smoking Areas'. It was then gazetted in the Club Bulletin in January 1996 as stipulated by the Constitution of the Club. On or about 24 July 2001, the defendant violated the Club's Bye-Law when he entered the 'Non Smoking Area', lit his cigarette, and blew the smoke onto a non-smoking member Mr Aw Chiew Soon. Prior to that, the defendant had also on several occasions violated the Bye-Law and despite several warnings continued to breach the said Bye-Law of the Club. As a result the defendant was suspended as a member of the Club for one (1) year from 3 June 1998 till 2 June 1999.

[5] As for the incident on 24 July 2001, the complaint by Mr Aw Chiew Soon is as follows:

Aw Chiew Soon (A0012)
Vice Captain
c/o Royal Perak Golf Club
Jalan Sultan Azlan Shah
31400 IPOH

4th September 2001

The Manager
Royal Perak Golf Club
Jalan Sultan Azlan Shah
31400 IPOH

Dear Sir

RE: COMPLAINT AGAINST MR CHAK KONG YIN

I wish to lodge a report that on 24th July 2001 at about 10.15 pm, Mr Chak Kong Yin (Account No: C0529) took an ashtray and smoked in front of me in the demarcated non-smoking area of our Club Karaoke Lounge. This is clearly a deliberate violation of our Clubhouse Rules and Bye-Laws for the Tiger Bar & Karaoke Lounge.

There were other members present on that night who witnessed the incident.

Thank you.

Yours faithfully

sgd

AW CHIEW SOON

Copies to:

Y. Bhg. Dato Hj Talaat Hj Husain	-	President, RPGC Ipoh.
Mr David Chung	-	Captain, RPGC Ipoh.
Mr James Loh	-	Chairman, Disciplinary Subcommittee RPGC Ipoh.

[6] Pursuant to the complaint from Mr Aw Chiew Soon, the Manager/Secretary of the Club by letter dated 17 September 2001 informed the defendant of the said complaint and requested him to reply within 14 days. The written notice of the Manager/Secretary is as follows:

KELAB GOLF DIRAJA PERAK

A.R. REGISTERED

Our ref: RPGC/Dis.
Date: 17th September 2001

Mr Chak Kong Yin
No. 50, Jalan Chong Tse Yen
31650 Ipoh.

Dear Sir,

RE: ALLEGED MISCONDUCT

We enclose herewith a copy of a complaint on you dated 4th September 2001 which is self-explanatory.

I have been directed to request you to reply in writing giving your explanation within 14 days of this letter to show cause why disciplinary action should not be taken against you.

Thank you.

Yours faithfully,

Sgd

Mohd Zabidi b. Abdul Latiff PMP.AMP.
Manager/Secretary

c.c. Mr. James Loh – Chairman, Disciplinary Committee

[7] Further, on 23 September 2001, the defendant accosted a group of members including Mr. Choong Ngok Son at the open dining area of the Club, shouted obscenities at the group incessantly, and when told to leave, acted in an unruly manner in pounding on the dining table. As a result, Mr Choong Ngok Son wrote a complaint letter dated 24 September 2001 which is as follows:

24th September 2001

Choong Ngok Son
Room 2 & 4 (2nd Floor)
Labrooy House
Jalan Dato Sagor
30000 IPOH

The Chairman
Discipline Committee
Royal Perak Golf Club
Jalan Sultan Azlan Shah
31400 IPOH

Dear Sir

Re: UNRULY BEHAVIOUR OF CHAK KONG YIN

On the afternoon of 23rd September 2001, I was seated together with the following persons at the RPGC Open Dining area peacefully having a drink:

David Chung	-	Captain
Aw Chiew Soon	-	Vice Captain
Peter Chai	-	Committee Member
Nantam Singh	-	Member
Dato Syed Mokhtar	-	Member
Cheah Sai keat	-	Member
Ng Eng Kah	-	Member
Alexis	-	Member

Mr Chak Kong Yin uninvitingly joined us. At about 5.00 pm, he suddenly shouted at me, using the following words:

'God has sent me to fuck you!'

He repeated this sentence twice more and banged on the table in a mad manner.

I told him to either shut up or get out from the table.

Datin Josephine Mohd Ariff who was seated alone near the open dining entrance came over and reprimanded Chak Kong Yin for using foul language in a loud voice.

I am putting up this report so that disciplinary action can be instituted against Chak Kong Yin.

Yours faithfully

Sgd

CHOONG NGOK SON
(Membership Number C0557)

Copies to:

Dato Talaat b Husain	-	President, RPGC Ipoh.
Mr David Chung	-	Captain, RPGC Ipoh.
Mr Aw Chiew Soon	-	Vice Captain, RPGC Ipoh.
Mr Peter Chai	-	Committee Member, RPGC Ipoh
Encik Mohd Zabidi	-	Manager RPGC Ipoh.

[8] By letter dated 26 September 2001, the Manager/Secretary of the Club, gave a written notice of the said complaint to the defendant which was as follows:

KELAB GOLF DIRAJA PERAK

A.R. REGISTERED

Our ref: RPGC/Dis.
Date: 26.9.01

Mr Chak Kong Yin
No. 50, Jalan Chong Tse Yen
31650 Ipoh.

Dear Sir,

RE: UNRULY BEHAVIOUR

We enclose herewith a copy of a complaint on you dated 24th September 2001 which is self-explanatory.

I have been directed to request you to reply in writing giving your explanation within 14 days of this letter to show cause why disciplinary action should not be taken against you.

Thank you.

Yours faithfully,

Sgd

Mohd Zabidi b. Abdul Latiff PMP.AMP.
Manager/Secretary

c.c. Mr. James Loh – Chairman, Disciplinary Committee

[9] By another letter dated 26 September 2001, the Manager/Secretary of the Club wrote to the defendant as follows:

KELAB GOLF DIRAJA PERAK

A.R. REGISTERED

Our ref: RPGC/Dis.
Date: 26.9.01

Mr Chak Kong Yin
No. 50, Jalan Chong Tse Yen
31650 Ipoh.

Dear Sir,

RE : ALLEGED MISCONDUCT

I have been directed to inform you that the Disciplinary Subcommittee is not satisfied with your explanation dated 19th September 2001. Pursuant to Article 106 of the Constitution and Rules of RPGC, a Board of Inquiry to investigate the complaint lodged against you by Mr. Aw Chiew Soon (A012) for **smoking in the demarcated non-smoking area on 24th July 2001 at the Club Karaoke Lounge** will be fixed as follows:

Date	:	Friday 5th October 2001
Time	:	8.00 p.m.
Place	:	Conference Room, RPGC

Please be present at the appropriate time with witnesses on your behalf if any.

Please also take note that should you fail to attend, the Inquiry will proceed in your absence and the findings of the Inquiry will be in due course implemented.

Thank you.

Yours faithfully,

Sgd

Mohd Zabidi b. Abdul Latiff PMP.AMP.
Manager/Secretary

c.c. 1. Mr. James Loh, Vice President/Chairman
Disciplinary Subcommittee

2. Members of Disciplinary Subcommittee

[10] Nevertheless, it is to be noted that a copy of the letter dated 19 September 2001, referred to in the said letter dated 26 September 2001, was not attached to both the plaintiff's affidavit and the defendant's affidavit in reply.

[11] By two letters dated 1 October 2001, the defendant replied to both the written notices from the secretary. The reply of the defendant is as follows:

Chak Kong Yin (C0529)
50, Jalan Chong Tse Yen
31650 Ipoh.

1st October 2001

Manager/Secretary
Royal Perak Golf Club
Jalan Sultan Azlan Shah
31400 Ipoh.

Dear Sir,

RE: UNRULY BEHAVIOUR

You letter dated 26.9.2001 refers.

The accusation by Mr. Choong Ngok Son is vexatious and frivolous. I deny using those words against Mr. Choong Ngok Son when he provoked me into an argument started by him.

Later I apologised to Datin Josephine Mohd Ariff on behalf of the members on that table and she accepted.

Yours faithfully.

Sgd

CHAK KONG YIN (C0529)
COMMITTEE MEMBER

Chak Kong Yin (C0529)
50, Jalan Chong Tse Yen
31650 Ipoh.

1st October 2001

Manager/Secretary
Royal Perak Golf Club
Jalan Sultan Azlan Shah
31400 Ipoh.

Dear Sir,

RE: ALLEGED MISCONDUCT

You letter dated 26.9.2001 refers. I enclose a copy of a police report lodged by me which is self-explanatory.

I must highlight to the Disciplinary Subcommittee that convening a Board of Inquiry at this time is inappropriate for the following reasons:

1) Under Rule 106, an Inquiry should only be held provided always that the Disciplinary Subcommittee is not satisfied with the explanation in reply to the Club's notice. Please provide me with reasons why the Disciplinary Subcommittee is **NOT** satisfied with my explanation in my reply dated 19.9.2001.

2) The Disciplinary Subcommittee has **NOT** provided me with the evidence as requested in my letter dated 19.9.2001 to prove the legality of the non-smoking rule.

3) The decision of the Disciplinary Subcommittee to convene an inquiry could be viewed as subjudice and contempt of court as the police is referring this case to the Magistrate.

I have appointed Paramjit & Co to act on my behalf.

Yours faithfully.

Sgd

CHAK KONG YIN (C0529)
COMMITTEE MEMBER

[12] As the Disciplinary Committee was not satisfied with the defendant's explanation to the complaint of Mr Choong Ngok Son, the Disciplinary Committee by a letter dated 22 October 2001 informed the defendant to attend an inquiry scheduled for 26 October 2001 pursuant to Rule 106 of the Constitution to answer the charge against him. The notice is as follows:

KELAB GOLF DIRAJA PERAK

A.R. REGISTERED

Our ref: RPGC/Dis.
Date: 22.10.01

Mr Chak Kong Yin
No. 50, Jalan Chong Tse Yen
31650 Ipoh.

Dear Sir,

RE : BOARD OF INQUIRY – UNRULY BEHAVIOUR

I have been directed by the Disciplinary Subcommittee of RPGC to inform you that the Disciplinary Subcommittee is not satisfied with your explanation dated 1st October 2001. Pursuant to Article 106 of the Constitution and Rules of RPGC, a Board of Inquiry to investigate the complaint lodged against you by Mr. N.S. Choong (C0557) for using foul language at him at the RPGC Open Dining area on 23rd September 2001 will be held as follows:

Date	:	Friday 26th October 2001
Time	:	8.10 pm
Place	:	RPGC Conference Room

Please be present at the appropriate time with witnesses on your behalf if any.

Please also take note that should you fail to attend, the Inquiry will proceed in your absence and the findings of the Inquiry will be in due course implemented.

Thank you.

Yours faithfully,

Sgd

Mohd Zabidi b. Abdul Latiff PMP.AMP.
Manager/Secretary

c.c. 1. Mr. James Loh, Vice President/Chairman Disciplinary Subcommittee

2. Members of Disciplinary Subcommittee

[13] The Disciplinary Committee on 30 October 2001 decided to expel the defendant from the Club. The Disciplinary Committee conveyed their decision to the Management Committee. Accordingly, by letter dated 30 October 2001, the defendant was duly notified of the decision of the Disciplinary Committee in that he had been expelled and the expulsion would take effect immediately from 30 October 2001. The said letter dated 30 October 2001 is as follows:

KELAB GOLF DIRAJA PERAK

Rujukan kami: RPGC/Dis./Inquiry
Tarikh: 30 October 2001

Mr. Chak Kong Yin (C0529)
50, Jalan Chong Tse Yen,
31650 Ipoh.

Dear Sir,

RE: ALLEGED MISCONDUCT

Our letter RPGC/Dis./Inquiry dated 22 October 2001 referred

A Board of Inquiry to investigate the complaint against you by Mr. Aw Chiew Soon (A012) for smoking in the demarcated non-smoking are on 24th July 2001 at the Club's Karaoke Lounge was held on Friday 26 October 2001.

The Board of Inquiry, based on the evidence adduced, found you guilty as charged. As this is your third similar offence, the Disciplinary Subcommittee takes a very serious view of it and unanimously decided that **you be expelled from the Club** as provided for in Rule 107(e) of the Constitution with immediate effect.

Thank you.

Yours faithfully,

Sgd

James Loh Kim Ling
Vice President/Chairman
Disciplinary Subcommittee

c.c. 1. Dato Talaat Hj Husain – President, RPGC
2. All Committee Members

[14] By letter dated 31 October 2001, the defendant replied to the letter dated 30 October 2001, which is as follows:

KELAB GOLF DIRAJA PERAK

Tarikh: 31 October 2001

Mr. James Loh Kim Ling
Vice President/Chairman
Disciplinary Subcommittee

Dear Sir,

RE: ALLEGED MISCONDUCT

Your letter RPGC/Dis./Inquiry dated 30 October 2001 referred.

I would like to draw to your attention that PART XVI: DISCIPLINARY PROCEEDINGS of the Club's Constitution and Rules apply **ONLY** to members and **NOT** to the Office-Bearers registered under Section 14(1)(b) of the Societies Act 1966 (Act 335).

As the General Body of the Club is the highest authority in a registered society, I propose the Committee call an Extraordinary General Meeting as provided for in Rule 84 of the Club's Constitution and Rules in order to resolve the above matter.

Thank you.

Yours faithfully,

Sgd

Chak Kong Yin
Committee Member/Chairman
Social Subcommittee

c.c. 1. Datin Penolong Pendaftar Pertubuhan, Perak
2. Y. Bhg Dato President, RPG
3. Members of the Committee RPGC
4. Members of RPGC

[15] Notwithstanding his expulsion on 30 October 2001 and prohibition from entering the Club, the defendant continued to enter the Club premises. The defendant challenged the Management Committee, the Disciplinary Subcommittee or servants or agents of the Club including the security guard who communicated that he was prohibited from entering the Club. The defendant in complete defiance to the Disciplinary Subcommittee's decision of his expulsion entered the Club and made use of the Club's facilities. On 15 November 2001 a police report was lodged at the Balai Polis Ampang Baru against the defendant by the Assistant Manager of the Club.

[16] By letter dated 26 November 2001, the defendant referred to the letter dated 30 October 2001 from the Disciplinary Subcommittee and his reply dated 31 October 2001 and wrote to the Manager/Secretary of the Club. The contents of the defendant's letter dated 26 November 2001 is as follows:

Chak Kong Yin (C0529)
50, Jalan Chong Tse Yen
31650 Ipoh.

26 November, 2001

Manager/Secretary
Royal Perak Golf Club
Jalan Sultan Azlan Shah
31400 Ipoh.

Dear Sir,

RE: ALLEGED MISCONDUCT

You letter RPGC/Dis./Inquiry dated 30 October 2001 and my reply dated 31 October 2001 referred.

I am writing to remind the Committee that my reply dated 31 October 2001 complies with Rule 108 of the Club's Constitution and Rules. Therefore, I am entitled to attend the next Management Committee Meeting to exercise my rights and privileges as provided under Rule 109. Also, please make available for me the minutes of the last Committee Meeting held on 29.10.2001, which I attended.

Thank you.

Yours faithfully,

Sgd

CHAK KONG YIN
Ahli Jawatankuasa
Kelab Golf Di Raja Perak.

c.c. 1. Dato President, RPGC
2. Datin Penolong Pendaftar Pertubuhan, Perak
3. Members of the Committee RPGC

[17] By a letter dated 10 December 2001, 116 members of the Club requisitioned for a Extraordinary General Meeting requesting the Disciplinary Committee to reinstate the defendant as a member. The Management Committee of the Club scheduled the said meeting to be held on 7 February 2002 as the President of the Club had intended to inform the members present that the agenda could not be deliberated on as it was against the Constitution.

[18] On 7 February 2002, the President of the Club attended the Extraordinary General Meeting and informed the members that the agenda could not be deliberated on at an Extraordinary General Meeting as it was unconstitutional and requested the members to refrain from proceeding with the meeting. However, as the meeting became disorderly, the plaintiff and members of the Management Committee and some other members present left the meeting. Thereafter the captain of the Club, Mr David Chung chaired the meeting and the members present decided to reinstate the defendant as a member of the Club.

[19] By a letter dated 9 February 2002 the Manager/Secretary of the Club wrote to the defendant as follows:

(a) the Extraordinary General Meeting was called by the Management Committee to explain the defendant's earlier suspension and subsequent expulsion;

(b) the reinstatement of the defendant by the Extraordinary General Meeting was null/void as the defendant had failed to appeal against the decision of the Disciplinary Subcommittee;

(c) that the defendant's expulsion remained and he was prohibited from entering the Club.

[20] As the defendant has continued to enter into the Club despite the expulsion by the Disciplinary Subcommittee, the President for and on behalf of the Club filed the civil suit for trespass and nuisance against the

defendant and obtained an interim injunction on 4 December 2002 from this Honourable court pending the hearing and disposal of the said application (enclosure 2). The interim order (enclosure 4) was as follows:

DI HADAPAN YANG ARIF DATO' V THIRIPURASINGAM

HAKIM MAHKAMAH TINGGI IPOH

PADA 4 HARIBULAN DISEMBER 2002 DALAM KAMAR

PERINTAH

ATAS PERMOHONAN pihak Plaintif secara lisan dan **SETELAH MENDENGAR** En. A. Silvanathan dengan En. Rabinder Singh a/l Juggeet Singh peguam-peguam bagi pihak Plaintif dan En. Jula Singh a/l Tara Singh bagi pihak Defendan.

ADALAH DIPERINTAHKAN bahawa:

(i) Defendan dilarang samada secara sendiri ataupun melalui pekerja-pekerjanya atau agennya ataupun sebaliknya, daripada memasuki, menyeberang, melalui ataupun dalam apa jua cara sekalipun, memasuki premis Kelab Golf DiRaja Perak yang merangkumi tanah dan bangunannya di Jalan Sultan Azlan Shah, Ipoh, Perak ('premis Kelab tersebut'); dan

(ii) Defendan dilarang samada secara sendiri ataupun melalui pekerja-pekerjanya atau agennya ataupun sebaliknya, daripada menggunakan premis Kelab tersebut dalam apa jua cara sekalipun sehingga permohonan Lampiran 2 didengar dan diputuskan.

Perintah di atas adalah tertakluk kepada Plaintif untuk membayar gantirugi seperti yang dinyatakan dalam perenggan 36 Kandungan 3 dan gantirugi ini akan ditaksirkan oleh Pendaftar Mahkamah ini apabila Mahkamah tetapkan tarikh untuk mendengar taksiran gantirugi tersebut

PENGINDORSAN MENURUT ATURAN 45 KAEDAH 7 KAEDAH-KAEDAH MAHKAMAH TINGGI 1980

AMBIL PERHATIAN bahawa jika Defendan, Chak Kong Yin, abai mematuhi perintah ini, dia boleh dikenakan proses pelaksanaan bagi maksud memaksa yang tersebut mematuhinya.

Bertarikh pada 4 haribulan Disember 2002.

t.t.

……..
TIMBALAN PENDAFTAR
MAHKAMAH TINGGI
IPOH

[21] On 7 May 2003, upon hearing both parties in respect of the application (enclosure 2), this court granted the injunction (enclosure 29) against the defendant on the same terms until the final disposal of the civil suit.

[22] On 29 October 2003, pursuant to an application filed on 2 October 2003 by Summons in Chambers dated 2 October 2003 (enclosure 45) by the plaintiff, this court granted leave (enclosure 48) to the plaintiff to replace Dato' Hj Talaat bin Hj Husain as plaintiff in this action and amend the name of the plaintiff to Dato' Hj Sirajuddin b Hj Salleh (suing in capacity of President-Principle Club Golf DiRaja Perak and on behalf of all the members) pursuant to s 9(b) of the Societies Act 1966 (Act 335 and Regulations).

[23] As for the civil suit, both parties agreed and took advantage of the facilities afforded by the rules of the court that the suit be decided and disposed of under O 33 r 2 of the Rules of the High Court 1980 ('the RHC'). Accordingly, this court so directed, and by consent the questions of the law which were framed (enclosure 30) are as follows:

(1) Whether the purported resolution dated 7 February 2002 to reinstate the defendant ('the said resolution') pursuant to the EGM on even date is null and void for the following reasons:

   (i) it contravenes the appeal provisions as set out under Rules 108, 109 and 110 ('the said Rules') of the Constitution;

   (ii) that the said resolution is tantamount to an amendment/ rescission of the appeal provided under the said Rules in that it violates

      (a) Section 11 of the Societies Act 1966; and/or

      (b) Rule 117 of the Constitution

[24] O 33 r 2 of the RHC states as follows:

> The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated. (see *Yap Ah Lean v Yap Hoi Leng & Ors* [1993] 2 CLJ 47).

[25] See also:

(1) *Radstock Co-Operative and Industrial Society Ltd v Norton-Radstock Urban District Council* [1968] 1 Ch D 605 (CA)

(2) *Radstock Co-Operative and Industrial Society Ltd v Norton-Radstock Urban District Council* [1968] 2 All ER 59

(3) *Thye Lam & Co v The Eastern Shipping Corpn Ltd* [1960] MLJ 235

(4) *Chan Kum Loong v Hii Sui Eng* [1980] 1 MLJ 313

(5) *Palaniappa Chettiar v Sithambaram Chettiar & Ors* [1982] 1 MLJ 186

(6) *Florence Bailes v Dr Ng Jit Leong* [1983] 2 MLJ 175

(7) *Huang Ee Hoe & Anor v Tiong Thai King & 4 Ors* [1991] 1 CLJ 381

(8) *Newacres Sdn Bhd v Sri Alam Sdn Bhd* [1991] 3 MLJ 474

(9) *Insurance Co v Nakano Singapore (Pte) Ltd* [1992] 1 SCR 390

(10) *Arab Malaysian Finance Bhd v Meridien International Credit Corporation Ltd London* [1993] 3 MLJ 193

(11) *Si Raja & Anor v Dato Mak Hon Kam & Ors* [1993] 3 MLJ 741

(12) *Fulcrum Capital Sdn Bhd v Dato' Samsudin Abu Hassan, Rahaz Sdn Bhd & Anor (Interveners) and another case* [2000] MLJU 610, [2001] 5 CLJ 73

(13) *Krishnan Rajan a/l N Krishnan v Bank Negara Malaysia & Ors* [2003] 1 MLJ 149

(14) *Petroleum Nasional Bhd v Kerajaan Negeri Terengganu* [2004] 1 MLJ 8

[26] For the purpose of clarity and convenience, it is useful to list out some of the relevant Rules of the Club which are as follows:

[27] The objects of the Club as provided under Rule 4 are as follows:

(a) To promote primarily the game of golf and other recreational facilities such as but not limited to tennis, squash, swimming and bowling.

(b) To apply to and if approved to accept from the Government, the Perak Turf Club or any other body or persons, purchase, take on lease or in exchange or otherwise occupy or acquire any land or buildings which may be requisite for the purpose of and in connection with any of the objects of the Club.

[28] Rule 21 states:

An Ordinary member shall enjoy all the facilities of the Club and privileges of membership thereto *subject nevertheless to the provisions of the Constitution and Rules and bye-laws of the Club that shall at any given time be in force*.

[29] Rule 60 of Part VIII states:

The Club shall be managed by the Management Committee of the Club.

[30] Rule 61 states:

Only Malaysian citizens who are Ordinary or Life members of the Club and in possession of a golf handicap can be elected as Committee members.

The Committee shall comprise the following:

(a) A President who shall be nominated by the Government of the State of Perak.

(b) Two (2) Vice-Presidents of whom one shall be appointed by the Government of the State of Perak and the other shall be elected by the members at the Annual General Meeting.

(c) A Captain who shall be elected at the Annual General Meeting.

(d) A Vice-Captain who shall be elected at the Annual General Meeting.

(e) Eight (8) Committee members; five (5) shall be appointed by the Government of the State of Perak and the other three (3) elected by the members from among members of the Club.

(f) Any vacancy shall be filled by the Committee by Co-opting any Ordinary member.

[31] Rule 66(i)–(v) states:

(1) The Committee shall within one month after each Annual General Meeting appoint the following Sub-Committees:

Finance & Administration Sub-Committee

Golf Sub-Committee

Ladies Golf Sub-Committee

Handicapping Sub-Committee

House & Bar Sub-Committee

Bowling Sub-Committee

Tennis Sub-Committee

Swimming Sub-Committee

Squash Sub-Committee

Social Sub-Committee

Editorial Sub-Committee

Disciplinary Sub-Committee as set out in Part XVI herein.

(ii) The Committee shall also from time to time appoint such other Sub-Committee(s) as the Committee may deem necessary.

(iii) The Composition of each of the Sub-Committee shall be at the discretion of the Committee who shall appoint the respective Chairman and in so far as the Ladies Golf Sub-Committee is concerned, the Family members and Ordinary members who are ladies with accredited handicaps shall elect the Captain of the Ladies Golf Sub-Committee.

(iv) Except for the Disciplinary Sub-Committee, the Captain and Vice-Captain shall be ex-officio members of all Sub-Committee.

(v) Except for the Disciplinary Sub-Committee, each Chairman shall appoint the members of his Sub-Committee who shall be confirmed by the Committee.

[32] Rule 68(a):

(a) To make, amend or repeal any rules and bye-laws regulating the affairs of the Club on any matters not provided for in these Rules;

[33] Rule 84:

The Committee may call an Extraordinary General Meeting of the Club when any question of urgent importance shall arise and shall be bound to do so on receiving a requisition in writing signed by not less than one hundred (100) members of the Club being Ordinary or Life members who shall state thereon the purpose for which they desire the meeting to be called.

Disciplinary Proceedings

[34] Rule 104 of Part XVI Disciplinary proceedings states:

The Committee shall appoint a Disciplinary Sub-Committee which shall hear and determine all complaints relating to conduct and discipline of members of the Club.

[35] Rule 105:

The Disciplinary Sub-Committee shall comprise five (5) members, three (3) of whom shall be appointed amongst members of the Committee, of whom one (1) shall be the Vice-President of the Club. Two (2) other members of the Disciplinary Sub-Committee shall be appointed from the Ordinary members of the Club who shall have been members of the Club for at least 10 years. The Vice-President shall be the Chairman of the Disciplinary Sub-Committee. The Manager/Secretary or in his absence such other person for the time being appointed in his place shall be Secretary of the Sub-Committee and who shall attend at all meetings but shall not take part in the proceedings of the Disciplinary Sub-Committee. The quorum of the Disciplinary Sub-Committee shall be three (3).

[36] Rule 106:

Upon receipt of any written complaint against any member the Manager/Secretary shall after consultation with the Chairman of the Disciplinary Sub-Committee issue to such member a notice in writing stating the complaint against him and calling upon him to submit his explanation thereon in writing within fourteen (14) days of the receipt of such notice. Provided Always that if the Disciplinary Sub-Committee is not satisfied with the explanation or if no explanation is given the Disciplinary Sub-Committee shall after due notice to the member concerned of the charge or charges against him hold such enquiry thereon and shall make such decision thereon at the conclusion of the enquiry.

[37] Rule 107:

The Disciplinary Sub-Committee shall be empowered after conclusion of the enquiry to make anyone or more of the following decisions:

(a) Discharge the complaint or charge against the member.

(b) Censure the member concerned.

(c) Impose a fine not exceeding the equivalent of six (6) months subscription.

(d) Suspend the member from the Club for such period as the Disciplinary Sub-Committee shall consider appropriate.

(e) *Expel the member*.

[38] Rule 108:

The decision of the Disciplinary Sub-Committee shall be final and shall not be subject to any appeal. *Provided Always that any member who is expelled* by the Disciplinary Sub-Committee *shall have the right to appeal to the Committee against the order of expulsion which appeal shall be lodged with the Manager/Secretary in writing within fourteen (14) days from the decision of the Disciplinary Sub-Committee*. (emphasis by this court)

[39] Rule 109:

The Committee shall make such decision on the appeal after due deliberation thereon as it shall deem appropriate.

[40] Rule 110:

The Committee shall upon receipt of a requisition in writing by not less than one-hundred (100) members as set out in Rule 84 hereof *within twenty-one (21) days of the decision of the Committee appealing against expulsion of such member by the Committee* convene an Extraordinary General Meeting of the Club. The

Extraordinary General Meeting shall subject to the Rules governing Extraordinary General Meetings decide by a majority whether the expulsion shall stand or set aside and whether any other sentence shall be imposed on the member in substitution thereof. Any decision made by the Extraordinary General Meeting shall be final and shall not be subject to appeal or review by any court of law.

[41] Rule 111(d) of Part XVII Cessation of Membership states:

is expelled from the Club or has been removed from membership;

[42] In the instant case, the relationship between the members of the Club, ie, the defendant and the plaintiff is founded on contract and is governed by the Rules and Constitution of the said Club. (see *Re Buckinghamshire and Constabulary Widow & Orphan Fund and Friendly Society (No 2)* [1979] 1 WLR 936, *Graeme Mcguire & Ors v John Ras Musses & Ors* [1998] 3 SLR 180). The decision reached by the Disciplinary Subcommittee on 30 October 2002 pursuant to Rule 107(e) of the Rules and Constitution of the Club to expel the defendant was subject to an appeal to the Committee. The appeal shall be lodged with the Manager/ Secretary in writing within fourteen (14) days from the decision of the Disciplinary Subcommittee to expel the defendant (see Rule 108). The Committee then shall give their decision on the appeal after due deliberation thereon as it shall deem appropriate (see Rule 109).

[43] In view of the express provisions of the Rules and Constitution of the Club, the defendant is bound by the contractual relationship he has with the Club. This court is of the view that the defendant must exhaust the appeal provision before resorting to seek help from members of the Club. In other words, despite the defendant's dissatisfaction with the decision of the Disciplinary Subcommittee, he cannot by-pass or circumvent the appeal provision against his expulsion and leap frog to the Extraordinary General Meeting without first appealing to the Committee and waiting for their decision (see Rules 108 and 109). It is only when the defendant has complied with the appeal provisions and a decision is made by the Committee and thereafter the decision by the Extraordinary General Meeting shall be final and shall not be subject to appeal or review by any court of law. In this connection, it is useful to refer to the '… the principle that where a specific remedy is provided under the rules of the club, it thereby deprives a member who insists upon to resorting to a remedy of any other form of remedy than that given by the rules as a precedent condition, is one which is very familiar and which runs through the law.' (see *Pasmore v The Oswaldtwistle Urban District Council* [1898] AC 387 at p 394 and *Wilkinson v Barking Corporation* [1948] 1 KB 721 at p 724, where both the cases were followed in *Manggai v The Government of Sarawak & Anor* [1970] 2 MLJ 41 at p 44-45).

[44] In *Tharmalingam v Sambanthan* [1960] MLJ 257 at p 258, His Lordship HT Ong (as he then was) said:

It is axiomatic that, in disputes between members of such an association, the rights of the plaintiff must depend on contract, because, by accepting membership of the association he contracted to be bound by its rules. Hence the material terms of their contract must be

sought in the rules of the association. (emphasis by this court) The plaintiff himself in no way questions the validity of Rule 28. Such being the case, it seems to me that the question resolves itself into this: does Rule 28 give the plaintiff any cause for complaint if natural justice was not done to him?'

[45] On appeal to the Court of Appeal (see [1961] MLJ 63 at p 64), Thomson CJ said:

For myself I have reached the same conclusion that the action should have been dismissed. I have, however, reached that conclusion by a course of reasoning which does not altogether coincide with that of Ong J., and which I propose to state in my own way.

As has been said, all these 'questions of' the relationship among members of an unincorporated association are matters of contract and the contract is to be found in the Rules or the Constitution of the association. If a member does not like the rules he has two courses open to him. Either he can refrain from joining the association, and in the present case I would observe in parenthesis that the Malayan Indian Congress has nothing in common with a trade union, membership of which may be a vital necessity if a person is to earn his livelihood. Or if he does join he can attempt to persuade his fellow members to change the rules. But *so long as he remains a member and so long as the rules are there his relationship with his fellow members falls to be regulated by them.* (emphasis by this court)

And these rules are to be interpreted like any other contract.

To my mind this consideration for reasons which I am about to state absolves me from any necessity to consider the principles of natural justice which is at present proving as unruly a horse as did public policy in a previous generation.

[46] It is the respectful view of this court that the condition precedent in Rule 108 must be followed and complied with by the defendant before resorting to an Extraordinary General Meeting. In order to appreciate the appeal provision, Rules 108, 109 and 110 must be read together. Therefore, the resolution or decision which was made at the Extraordinary General Meeting on 7 February 2002 to reinstate the defendant who was expelled as a member of the Club by the Disciplinary Subcommittee, was premature and in contravention of the express provisions of Rules 108 and 109 of the Rules and Constitution of the Club. Rules 108, 109 and 110, expressly state as follows:

Rule 108:

The decision of the Disciplinary Sub-Committee shall be final and shall not be subject to any appeal. Provided Always *that any member who is expelled by the Disciplinary Sub-Committee shall have the right to appeal to the Committee against the order of expulsion* which appeal *shall be* lodged with the Manager/Secretary in writing within fourteen (14) days from the decision of the Disciplinary Sub-Committee.

Rule 109

The Committee shall make such decision on the appeal after due deliberation thereon as it shall deem appropriate.

Rule 110

The Committee shall upon receipt of a requisition in writing by not less than one-hundred (100) members as set out in Rule 84 hereof *within twenty-one (21) days of*

the decision of the Committee appealing against expulsion of such member by the Committee convene an Extraordinary General Meeting of the Club. The Extraordinary General Meeting shall subject to the Rules governing Extraordinary General Meetings decide by a majority whether the expulsion shall stand or set aside and whether any other sentence shall be imposed on the member in substitution thereof. Any decision made by the Extraordinary General Meeting shall be final and shall not be subject to appeal or review by any court of law.

[47] This court is of the view that Rules 107 and 108 are expressed in clear language and that it is only after the defendant has lodged an appeal in writing to the Management Committee of the Club against his expulsion by the Disciplinary Subcommittee within (14) days from the decision of the Disciplinary Subcommittee, *and only after the Management Committee has decided on his appeal*, can Rule 110 be invoked to call for an Extraordinary General Meeting to consider the expulsion. On the facts in the instant case, Rule 110 was invoked without first resorting to and with complete disregard to the express provisions of Rules 108 and 109. On the other hand, if there was in fact an appeal in writing lodged by the defendant as provided under Rule 108 or, for that matter, even to treat the defendant's letter dated 31 October 2001 (exhibit CKY 7) which is attached to the defendant's affidavit (enclosure 16) as an appeal as contended by learned counsel for the defendant (which this court is of the view is not a letter of appeal pursuant to Rule 108), the resolution or decision made at the Extraordinary General Meeting on 7 February 2002 to reinstate or set aside the expulsion which was made by the Disciplinary Subcommittee, was also in violation of Rules 109 and 110 as first, there ought to be a decision by the Management Committee (see Rule 109) before Rule 110 could be invoked, and secondly, the requisition by some members of the Club by letter dated 10 December 2001 to call for an Extraordinary General Meeting should be made within 21 days of the decision of the Committee. However, on the facts in the instant case, there was no decision made by the Management Committee under Rule 109 as there was no appeal lodged by the defendant.

[48] As stated above, if the defendant has in fact filed an appeal to the committee as provided under Rule 108 as contended by the defendant's counsel, he should then rightfully wait for the decision and not pre-empt the decision of the Management Committee and proceed to seek help from the other members to have him reinstated as a member of the Club as this would be premature. The defendant is in fact precluded from invoking Rule 110 until he has exercised and exhausted his right of appeal and a decision is reached by the Management Committee and conveyed to him. In the instant case, this court has to consider the express rules of the Club and must give fair and full effect to the said rules. The defendant cannot indulge in conjecture or speculation as to what the decision of the Management Committee would have been, ie, if there was a proper appeal lodged and if it was filed within the period of fourteen (14) days from the decision of the Disciplinary Subcommittee to expel the defendant. (See *White v Kuzyah* [1957] AC 585 at p 600). On the other hand, if the defendant has not appealed to the Management Committee within the fourteen (14) days period, he is deemed to have waived his right of appeal

and is bound by decision of the Disciplinary Subcommittee. He cannot therefore proceed to the Extraordinary General Meeting for assistance unless he has exhausted his appeal to the Committee and the Committee has made the decision on his appeal.

[49] This court is also of the view that the defendant cannot circumvent or side step the cold print of the special provision of the Rules of the Club on the appeal provision with regard to his expulsion before he resorted to obtain assistance from the other members of the Club at the Extraordinary General Meeting. In fact, there is a condition precedent to comply before resorting to obtain assistance or relief at the Extraordinary General Meeting. Whether the defendant is popular, a favourite and/or has the support of the other members of the Club is not a criteria for reinstatement but the reinstatement must be done in accordance with the Rules of the Club which must be followed and complied with by each and every member of the Club to maintain discipline. This court is of the view that it was incumbent upon the defendant to have pursued his appeal against his expulsion by the Disciplinary Subcommittee in accordance with the express rule of the Rules of the Club. The defendant cannot gain entry into the Club illegally through the side door where the front door was legally and always open to him to avail himself of the appeal provision unless his attempt to gain entry through the front door has been exhausted and closed which is not the case on the facts in the instant case – *generalia specialibus non derogant* (general things do not derogate from special things).

[50] In *Datuk Pasamanickam & Anor v Agnes Joseph R Narayanan Samy v Agnes Joseph* [1980] 2 MLJ 92 at p 93, Ajaib Singh J. (as he then was) said:

> '*It is settled law that members of a registered society are bound by its rules. If the rules provide that disputes between any member and the society or its office-bearers are to be decided by reference to a domestic forum within the framework of the society itself then no other outside tribunal has any jurisdiction to hear such disputes in the first instance.* Such a provision in the rules of a registered society has the effect of ousting the jurisdiction of the court to hear any dispute between a member and the society or its office-bearers. On this point Thomson C.J. (as he then was) had this to say in the case of *Tharmalingam v Sambanthan*— (emphasis by this court)
>
> As has been said, *all these questions of the relationship among members of an unincorporated association are matters of contract and the contract is to be found in the Rules or the Constitution of the association*. If a member does not like the rules he has two courses open to him. Either he can refrain from joining the association, and in the present case I would observe in parenthesis that the Malayan Indian Congress has nothing in common with a trade union, membership of which may be a vital necessity if a person is to earn his livelihood. Or if he does join he can attempt to persuade his fellow members to change the rules. *But so long as he remains a member and so long as the rules are there his relationship with his fellow members fall to be regulated by them.* (emphasis by this court)

[51] This court is of the view that it is a mischievous act on the part of the defendant to enter through the side door by resorting to Extraordinary General Meeting as provided under Rule 110 where the defendant has an adequate remedy to exhaust where he should have first lodged an appeal to

the Management Committee to have his expulsion determined. As this court has stated above, where a specific remedy is provided by the Rules of the Club, that rule must be exhausted before the defendant resorts to any other method of having him reinstated. In fact it is for the defendant to satisfy this court that he has exhausted the remedy as provided under Rule 108 but, however, if he insists upon a remedy of his choice without going through the pre requisite he runs foul of the rules and the entire stages of the prescribed machinery in the Club's Rules. Members' entry and disciplinary action against them is governed by the Rules of the Club. No party should be permitted to re-enter the Club after his expulsion by side stepping any Rules of the Club.

[52] This court recognises that the power given to the committee to expel a member of the Club is a drastic power as it may affect a person's reputation and concerns the enjoyment of his rights of membership or office as has been held in *Andrews & Ors v Mitchell* [1905] AC 78 at p 82, where Lord Davey observed:

> ... It is a serious thing to expel a man from a society, of which he has been a member, I think it was stated in this case for eighteen years, or something of that kind, and who has no doubt paid his subscriptions for a long period. And although such a power is necessary for the due administration and harmonious working of the society, and a power for that purpose is therefore properly given by the rules, it ought always to be exercised in accordance with the condition imposed by the rules …

[53] On the other hand, the Management Committee owes a duty to other members of the Club to ensure discipline and that the Rules and Constitution of the Club are strictly observed. [see *John v Rees* [1970] Ch D 345]. Romer LJ in *Everett v Ribbands & Anor* [1952] 2 QB 198 at p 206 said:

> ROMER L.J. For myself, I think it is a pity that this point was not set down as a preliminary point of law before the hearing. The action was a substantial one; I understand it was estimated to last three days, and I can well believe that it would. The point of law if decided, as it has been, against the plaintiff, would have been decisive of the case. Although there may have been good reason for not applying, I should have thought this was the very class of case in which an application ought to have been made under Ord 25 r 2, to have the point determined before the hearing, so as to save all discovery of documents, the collecting together of witnesses, and so on, and have the question decided at a very early stage. I think where you have a point of law which, if decided in one way, is going to be decisive of litigation, then advantage ought to be taken of the facilities afforded by the Rules of Court to have it disposed of at the close of pleadings or very shortly after the close of pleadings. What I have said so far has nothing to do with whether the appeal succeeds or fails, but, in my judgment, it fails and should be dismissed. (see *Carl-Zeiss-Stiftung v Herbert Smith & Co (a firm) & Anor* [1968] 2 All ER 1002).

[54] However, it must be understood by each and every member of the Club, as in the case of a social and sports club, that the rules of the respective club usually empowers the committee or the disciplinary committee to expel a member who, in their opinion, has been guilty of

conduct detrimental to the club; and the decision reached is a matter of opinion and nothing else. In *Lee v The Showmen's Guild of Great Britain* [1952] 2 QB 329 at pp 341, 343) it was stated:

> Next, plaintiffs Counsel contended that there was a breach of the rules of natural justice. What is so magical about the rules of natural justice? In the case of *Lee v The Showmen's Guild of Great Britain* [1952] 2 QB 329 at p 342, 343 Lord Denning had this to say:
>
> 'to what extent will the Courts examine the decisions of domestic tribunals on points of law? This is a new question which is not to be solved by turning to the club cases. In the case of social clubs, the rules usually empower the committee to expel a member who in their opinion, has been guilty of conduct detrimental to the club; and this is a matter of opinion and nothing else. The Courts have no wish to sit on appeal from their decisions on such a matter any more than from the decisions of a family conference. They have nothing to do with social rights or social duties. On any expulsion they will see that there is fair play. They will see that the man has notice of the charge and a reasonable opportunity of being heard. They will see that the committee observe the procedure laid down by the rules; but they will not otherwise interfere.'

[55] In passing, this court had also considered the case in *JC Dias & Ors v JT Alfonso & Ors* 1934 180 Sind 180 at p 181, where Rupchand AJC said:

> … , *the chairman has always the power to adjourn a meeting which is so disorderly that no business can be transacted thereat*. In the absence of such an exception to the rule, one may well imagine that the position of a chairman would be very awkward when he finds a number of those present are unruly and are bent on mischief. *He should be exposing himself and others to the risk of being injured if he does not dissolve the meeting before ascertaining the 'sense of the meeting'*,which again it would be difficult for him to ascertain in view of the rowdiness of some of those present. I do not wish to imply or to suggest that this meeting was in any way rowdy or that the action of the chairman was right.' (emphasis by this court)

[56] In the instant case, the defendant's counsel had referred to the case of *David Chong Ket Sui v Datuk Chau Tet On (Chairman and Office Bearer of Royal Sabah Turf Club for and on behalf of himself and the Management Committee of Royal Sabah Turf Club* [1993] 3 CLJ 468. This court is of the view, with respect, that the facts in that case are poles apart compared to the facts and background in the instant case. In that case, the defendant-Club did not grant the plaintiff's request to be heard orally at the inquiry. Accordingly, in that case, the court granted the declaration sought by the plaintiff against the defendant to reinstate him as a full member of the Club as the Club had acted ultra vires the Constitution and conducted themselves in bad faith as to the expulsion. In the circumstances, this court is of the view that the facts in that case are distinguishable when compared to the facts in the instant case. Consequently, on both scores in the instant case, the resolution made at the Extraordinary General Meeting on 7 February 2002 is flawed and is null and void as it has violated Rules 108, 109 and 110 of the Club.

[57] As to the second question posed in enclosure 30, although the resolution or decision made at the Extraordinary General Meeting on

7 February 2002 did not expressly amend or rescind the appeal provision under the Rules of the Club in the strict sense of it to the extent of violating s 11 of the Societies Act 1966 and/or Rule 117 of the Rules of the Club, it is still a violation of the appeal provision as expressly provided under the Rules of the Club and tantamount to an amendment/recission of the appeal provided under the Rules of the Club.

[58] As to the defendant's position as a member of the Management Committee, the defendant's counsel has submitted that his expulsion as a member of the Club does not affect his position as a member of the Management Committee. On this issue, this court is of the view that once a member of the Club is expelled in accordance with the Rules of the Club then ordinarily he automatically loses all his rights and privileges which included his position as a member of the Management Committee. There is no requirement for a separate exercise to be carried out or to issue a Show Cause Notice by another Body to expel him as a member of the Management Committee as his election to the Management Committee was made by virtue of his membership as a member of the Club although preferably a record should be made by the Management Committee that the defendant has forfeited his right to serve as a member of the Management Committee. By analogy, and similarly, if a member of the Bar who was elected to hold position in the State Bar Committee or the Bar Counsel is struck off the Roll, he will automatically and consequentially lose his position in the State Bar Committee or the Bar Council as the case may be. Therefore, the contention of the defendant's counsel that the defendant's position as a member of the Management Committee is not affected, or he has not lost his position as a member of the Management Committee, is misplaced on the facts and in law. Consequently, the ouster provision in Rule 110 and s 16 of the Societies Act 1966 as raised on behalf of the defendant, has no application to the facts in the instant case. Accordingly, the defendant who was expelled as a member of the Club also ceases to be a member of the Management Committee.

General Observation by the Court Involving Social and Sports Clubs

[59] Seeking the court's intervention involving social and sports clubs should if possible be avoided where the complaint alleged is trivial in nature. Every endeavour should be made to resolve disputes between members of the Club and the Club Management Committee within the ambit and Rules of the Club otherwise it might smear the good name of the Club and as a result it could discourage people of high standing in society from contributing either financially or from contributing or offering their invaluable services to the Club in the promotion of sports activities and recreational facilities for fear of being dragged to court. Also, it could burden innocent members of the Club by way of legal expenses and costs which is not in the best interests of the Club. Similarly, in the event of any dispute concerning the status and position of an ordinary member or a member of the Management Committee of a social or sports Club, it should also if possible be resolved within and in accordance with the Rules and

ambit of the Club before seeking the court's intervention so that the object of the formation of the Club could be maintained and respected. In other words, unless there is a clear violation of the principles of natural justice or the decision arrived is beyond the powers of the Management Committee as provided under the Rules or the Constitution of the Club, it should avoid seeking the court's intervention so as to preserve a harmonious and close relationship among its members. On the other hand, if the rules of a social and sports club have been, as in the instant case, violated or the procedure laid down by the rules have not been observed or breached, then perhaps, it is legitimate to seek redress in court. In *Datuk Pasamanickam & Anor v Agnes Joseph R Narayanan Samy v Agnes Joseph* [1980] 2 MLJ 92 at p 93, Ajaib Singh J (as he then was) said:

> ... If the rules of a society have been violated then any member can quite legitimately seek redress in court for in such a situation the court is not only not incompetent to hear the complaint but is the only forum to do so in the exercise of its jurisdiction over registered societies to see that they conform to their constitution. (See the case of *Arthur M'Cowan v The City of Glasgow Friendly Society & Ors*).

[60] In *Lee v The Showmen's Guild of Great Britain* [1952] 2 QB 329 at pp 342, 343, Lord Denning said:

> … to what extent will the Courts examine the decisions of domestic tribunals on points of law? This is a new question which is not to be solved by turning to the club cases. In the case of social clubs, the rules usually empower the committee to expel a member who in their opinion, has been guilty of conduct detrimental to the club; and this is a matter of opinion and nothing else. The Courts have no wish to sit on appeal from their decisions on such a matter any more than from the decisions of a family conference. They have nothing to do with social rights or social duties. On any expulsion they will see that there is fair play. They will see that the man has notice of the charge and a reasonable opportunity of being heard. *They will see that the committee observe the procedure laid down by the rules; but they will not otherwise interfere.* (emphasis by this court)

[61] Be that as it may, in the instant case, based on the facts and circumstances, this court is satisfied that the plaintiff had no other alternatives but to seek the court's intervention in respect of the defendant's conduct after his expulsion by the Disciplinary Subcommittee. In conclusion, this court is of the respectful view that the decision made at the Extraordinary General Meeting on 7 February 2002 was not in accordance with the spirit and object of the express rules of the Club (see *Chooa E Pek & Ors v Un Siang Mead & Ors* [1982] 1 MLJ 267).

[62] In the circumstances, the question of law posed pursuant to O 33 r 2 of the RHC (see enclosure 30) is answered in the affirmative, in that the purported resolution made at the Extraordinary General Meeting on 7 February 2002 to reinstate the defendant or set aside the decision of the Disciplinary Subcommittee, is null and void and is of no effect as it contravened the appeal provisions as set out under Rules 108, 109 and 110 of the Club's Rules and Constitution.

[63] Accordingly, the plaintiff's claim as per the Writ of Summons, (enclosure 1) as in prayers 1, 2, 3 and 5 is allowed as per the oral Judgment given on 18 December 2003 (enclosure 54). As for the order made in prayer 3 and the claim in prayer 4, the Deputy Registrar of the High Court, Ipoh is ordered to assess the damages. Assessment was fixed for mention on 15 December 2003 before the Deputy Registrar of the High Court.

Plaintiff's claim allowed.

Reported by AG Kalidas